disclosure would not have enabled one of ordinary skill in the art to create a broadcast receiver-generated purchase request [ ]. The [Applicant] has not provided evidence in support of that argument, and arguments of counsel cannot take the place of evidence." Decision, pp. 3-4. The Board then concluded that it "was not convinced of reversible error in the examiner's rejections." *Id.* at p. 4.

In response, Applicant submits the Declaration of Dr. Walter E. Thain, Jr., an independent expert in the field of wireless communications who is familiar with the arguments in this application and has reviewed *Kesling*. See Para. 4. Dr. Thain details in his Declaration the steps necessary to complete an electronic purchase transaction by pressing the button 1220 of *Kesling* (Para. 5), and shows literature illustrating electronic purchases generally at the time of the filing of *Kesling* (Paras. 7-9; Exs. A-C) and the requirements for completing such transactions. Dr. Thain states that: "[t]he process and actions involved in conveying payment information and completing a purchase transaction at the press of button 1220 would be complex and require a sophisticated method to properly and securely handle such information. Such a process and methodology are not described in *Kesling*. " Para. 14. Therefore, as Dr. Thain concludes in Para. 15: "pressing button 1220 does not enable a complete purchase transaction in the system described by *Kesling*, as is suggested by the Patent Office."

In order to reject the claims under 35 U.S.C. §102(e), *Kesling,* must disclose all elements thereof (MPEP §2141), and because *Kesling* does not at least disclose, as the Declaration of Thain and evidence demonstrate, the element of the "purchase request" in independent Claims 1, 9 and 12, which is likewise in dependent Claims 2-8, 10-13, this ground of rejection cannot stand and Applicant hereby requests allowance of Claims 1-13 and 15-19.

Claim 14 is dependent from independent Claim 12, which includes the step of the broadcast receiver receiving a purchase request. As argued above, *Kesling* does not have the element of a purchase request originating at the broadcast receiver, and Applicant submits that the suggested modification of *Kesling* with an Official Notice of secure communication protocol does not disclose this element. In order to render obvious the presently claimed invention, the suggested combination must disclose all elements of the rejected claims. MPEP §2143. As the suggested combination fails to

disclose at least the element of the broadcast receiver receiving a purchase request, the Applicant respectfully submits that Claim 14, as dependent on independent Claim 12, cannot be rendered obvious by the suggested combination and allowance thereof is respectfully requested.
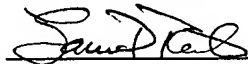
Conclusion

In view of the foregoing remarks and the Declaration of Thain, Applicant respectfully submits that Claims 1-19 are in condition for allowance and notification to that effect is earnestly solicited. If necessary, the Examiner is invited to telephone Applicant's attorney (404-815-3380) to facilitate prosecution of this application.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees that may be required, including any necessary extensions of time, which are hereby requested to Deposit Account No. 03-0683.

Respectfully submitted,

Stephen A. Ewald
By his Representatives,

Date 20 June 2006

Lance D. Reich
Reg. No. 42,097
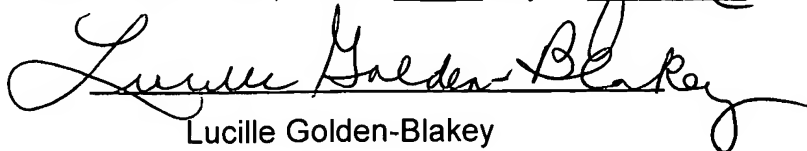
CARLTON FIELDS, P.A.
1201 West Peachtree Street, Suite 3000
Atlanta, Georgia 30309
Telephone: (404) 815-3400
Facsimile: (404) 815-3415
Customer Number 49358

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CERTIFICATE UNDER 37 CFR 1.8

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner of Patents, P.O. Box 1450, Alexandria VA 22313-1450, on this 20 day of June, 2006.

Lucille Golden-Blakey